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IN THE

Supreme Court of the United States

October Term, 1969

No. .....

STUART SCHERR and STEVEN GOODMAN,

Petitioners,

v.

UNIVERSAL MATCH CORPORATION and UNITED STATES OF AMERICA,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

HERBERT KANON,
150 Broadway,
New York City, N. Y. 10038.
212-227-8500

BERNARD OLCOTT,
200 Park Avenue,
New York City, N. Y. 10007.
212-TN 7-5650

Counsel for Petitioners

January 8th, 1970.

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The petitioners, Stuart Scherr and Steven Goodman, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Second Circuit entered in this proceeding on October 15th, 1969.

Opinion Below

The opinion of the Court of Appeals, not yet reported, appears in the Appendix hereto. The opinion of the United States District Court for the Southern District of New York, reported in 297 F. Supp. 107 (1967), appears in the Appendix hereto.

Jurisdiction

The judgment of the Court of Appeals for the Second Circuit was entered on October 15th, 1969. This Court's jurisdiction is invoked under 28 United States Code (U. S. C.) §1254(1).

Questions Presented

1. Whether the petitioners had, in their own right, obtained a valid copyright upon a certain statue now permanently located at Fort Dix, New Jersey.

2. Whether the petitioners in creating and fabricating the aforesaid statue, created and fabricated the same as part of their duties as soldiers of the United States Army.

3. Whether Congress may permit the issuance of a copyright to a person who is not the author of a "work".

4. Whether a soldier in the United States Army may obtain a copyright in his own right while on active duty.

5. Whether the petitioners have been deprived of their property rights in their copyright without due process of law.

6. Whether a citizen is divested of his Constitutional rights upon becoming a soldier in the United States Army.

Constitution and Statutory Provisions Involved

Constitution, Article 1, Section 8:

> The Congress shall have the Power . . . to promote the Progress of Science and useful Arts, by

securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries; (Clause 8)

Constitution, Amendment XIV, Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

United States Code, Title 17:

§8. *Copyright not to subsist in works in public domain, or published prior to July 1, 1909, and not already copyrighted, or Government publications; publication by Government of copyrighted material*

No copyright shall subsist in the original text of any work which is in the public domain, or in any work which was published in this country or any foreign country prior to July 1, 1909, and has not been already copyrighted in the United States, or in any publication of the United States Government, or any reprint, in whole or in part, thereof, except that the Postmaster General may secure copyright on behalf of the United States in the whole or any part of the publications authorized by section 2506 of title 39.